

COOPERATIVE / SERVICE PROVIDER AGREEMENT
Between
CITY OF NORTH BEND
And the
MOUNTAINS TO SOUND GREENWAY TRUST

Tollgate Farm E Bookend NW Parcel
Weed Control Project, Phase 2

THIS AGREEMENT, is made and entered into in duplicate this _____ day of April, 2013, by and between the CITY OF NORTH BEND, a Washington municipal corporation, hereinafter referred to as the "CITY" and the MOUNTAINS TO SOUND GREENWAY TRUST, a non-profit organization recognized in the State of Washington, hereinafter referred to as the "Greenway Trust".

SCOPE OF WORK SUMMARY:

The City and the Greenway Trust are entering into this Cooperative / Service Provider Agreement in order to facilitate the recruitment, training, and coordination of volunteers and AmeriCorps conservation corps members with respect to a volunteer effort to restore the Tollgate Farm Bookend, located in the forested section along the eastern boundary of Tollgate Farm. Currently, ivy and other noxious weeds are invading Tollgate Forest, threatening the health of the forest by crowding out native plant species and degrading wildlife habitat. The goals of this project include: 1) facilitating volunteer and conservations corps participation in the restoration of the park, and educating them about the threat invasive weeds pose in local natural areas; 2) building capacity within the City to complete ecological restoration projects; and 3) enhancing the natural features of the park by controlling ivy and allowing native plants to regenerate. The City is using a King County Flood Control District grant to fund the project and now wishes to partner with the Greenway Trust to provide volunteer coordination services to complete the restoration.

1. SERVICES BY THE GREENWAY

The Greenway Trust shall provide the volunteer coordination services described in the scope of work attached hereto as Exhibit "A" ("Volunteer Coordination Services"), in a manner consistent with the accepted practices for other similar services, performed to the City's satisfaction, within the time period prescribed by the City and subject to such reasonable requirements as are provided by the City Senior Planner or his/her designee.

2. PAYMENT

- 2.1 City shall pay the Greenway Trust a total amount not to exceed Thirty-one Thousand, Nine Hundred Ninety Dollars (\$31,990.00), for the Volunteer Coordination Services, calculated on the basis of the rate schedule attached hereto as Exhibit "B." (Budget).

- 2.2 After the completion of the Volunteer Coordination Services or on a quarterly basis for services provided that quarter, the Greenway Trust shall submit an invoice to the City and the City shall pay all invoices within 45 days of receipt of a proper invoice. Final invoice must be submitted by July 31, 2015.
- 2.3 If the Volunteer Coordination Services do not meet the requirements of this Agreement or are not otherwise to the satisfaction of the City, the Greenway Trust will correct or modify the work to comply with this Agreement. City may withhold payment for such Volunteer Coordination Services until the work meets City approval.

3. DISCRIMINATION AND COMPLIANCE WITH LAWS

- 3.1 The Greenway Trust agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.
- 3.2 The Greenway Trust shall comply with and perform the Volunteer Coordination Services in compliance with all federal, state and local laws and ordinances, as now existing or hereafter adopted or amended. The Greenway Trust shall ensure that prevailing wages (as defined by RCW 39.12) are paid to the extent required to all persons working in performance of the Volunteer Coordination Services.
- 3.3 Violation of any provision in this Section shall be a material breach of this Agreement and may result in ineligibility for further work for the City.

4. TERM AND TERMINATION OF AGREEMENT

- 4.1 This Agreement shall commence on the effective date of this Agreement, as defined below, and shall continue until the completion of the Volunteer Coordination Services, which completion shall occur no later than June 30, 2015 ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Greenway Trust.
- 4.2 This Agreement may be terminated by either party upon thirty (30) days written notice. The Greenway Trust shall be entitled to just and equitable compensation at the rate set forth in Section 2 above for any satisfactory work completed prior to the date of termination.

5. GENERAL ADMINISTRATION AND MANAGEMENT

The City's Senior Planner shall be the City's Project Manager and shall oversee and approve all Volunteer Coordination Services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement. The Greenway Trust is to consider that City property is open to the public at all times, and the services performed by Greenway Trust under this Agreement shall be conducted in such a way that the public use and daily operation of the Park shall not be affected without prior written approval by the City.

6. WARRANTY

- 6.1 The Greenway Trust warrants that it has the requisite training, skill and experience necessary to provide the Volunteer Coordination Services and is appropriately accredited and licensed by all

applicable agencies and governmental entities, including but not limited to being registered to do business in the City of North Bend by obtaining a City of North Bend business registration.

- 6.2 After all tasks are completed per specifications and approved by the City Project Manager, the Greenway Trust assumes no liability for on-going site maintenance, plant survival, or structural fault of project engineering, design, or installation, unless otherwise specified in the Scope of Work or as specified in future contracts.

7. HOLD HARMLESS

To the maximum extent permitted by law, Greenway Trust shall defend, indemnify and hold harmless the City and all of its officials, employees, principals and agents from all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property, which arise out of, are connected with, or are due to any errors, omissions or negligent acts of Greenway Trust, its contractor, and/or employees, agents, volunteers or representatives in performance of this Agreement; provided, however, that if (and only if) the provisions of RCW 4.24.115 apply to the work and services under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of Greenway Trust, its contractor or employees, agents, volunteers or representatives and the City or its employees, agents, or representatives, the indemnification applies only to the extent of the negligence of Greenway Trust, its contractor or employees, volunteers, agents, or representatives. In the event of any such claims, demands, suits, actions, and lawsuits, Greenway Trust shall assume all costs of defense thereof, including administrative and legal fees incurred by the City, and of all resulting judgments that may be obtained against the City or any of its officers, principals, agents, or employees. If resulting therefrom, any lien is placed upon property of the City or any of its officers, principals, agents, or employees, Greenway Trust shall at once cause the same to be dissolved and discharged by giving bond or otherwise. Greenway Trust specifically assumes the risk of potential liability for actions brought by Greenway Trust's own employees against the City and for that purpose Greenway Trust specifically waives, as respects the City only, any immunity under the Worker's Compensation Act, RCW Title 51; and Greenway Trust recognizes that this waiver was the subject of mutual negotiation and specifically entered into pursuant to the provision of RCW 4.24.115, if applicable. In the event either party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Section against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

City shall protect, defend, indemnify and hold harmless the Greenway Trust, its officers, employees, volunteers and agents from any and all costs, claims, judgments or awards of damages, (including costs and all attorney fees) arising out of or in any way resulting from the sole negligent acts, errors or omissions of City, its officers, employees or agents in performing this Agreement.

The provisions of this Section shall survive any expiration or termination of this Agreement.

8. INSURANCE

The Greenway Trust agrees to carry at a minimum, the following insurance, in such form and with such carriers who have a current A.M. Best rating of not less than A:VII or other industry rating which is satisfactory to the City:

8.1 Commercial general liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 or a substitute form providing equivalent commercial general liability coverage, and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Greenway's Commercial General Liability insurance policy with respect to the work performed for the City. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

8.2 Automobile liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage, with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

The insurance policies for Commercial General Liability and Automobile Liability shall contain the following endorsements or provisions:

1. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Greenway Trust's insurance and shall not contribute with it.
2. The Greenway Trust's insurance shall not be cancelled unless thirty (30) days prior written notice has been given to the City.

The Greenway Trust shall furnish the City with original certificates and a copy of the amendatory endorsements, including without limitation the additional insured endorsement evidencing the insurance requirement of the Greenway Trust before commencement of the Volunteer Coordination Services. The Greenway Trust's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

9. SAFETY

The Greenway Trust shall take all necessary precautions for the safety of the public in the Park and for employees on the work site and shall comply with all applicable provisions of federal, state and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). The Greenway Trust shall erect and properly maintain, at all times, all necessary guards, barricades, signals and other safeguards at all unsafe places at or near the site for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. The Greenway Trust shall protect from damage all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the performance of the Volunteer Coordination Services. The Greenway Trust shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same.

10. CLEAN UP

At any time ordered by the City and immediately after completion of the Volunteer Coordination Services, the Greenway Trust, shall, at its own expense, clean up and remove all refuse and unused materials of any kind, except for invasive plant material as specified in Exhibit A, resulting from the Volunteer Coordination Services. In the event the Greenway Trust fails to perform the necessary clean up, the City may, but in no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the Greenway Trust to the City and/or the City may deduct its costs from any remaining payments due to the Greenway Trust. The Greenway Trust shall work with a representative of the City to identify a means of disposing of refuse and other garbage on site and not related to the performance of Volunteer Coordination Services.

11. SUBLETTING OR ASSIGNING CONTRACT

Neither City nor Greenway Trust shall assign, transfer, subcontract the Volunteer Coordination Services, or otherwise encumber any rights, duties or interests accruing from this Agreement without the express prior written consent of the other party.

12. INDEPENDENT ORGANIZATION

The Greenway Trust is and shall be at all times during the term of this Agreement an Independent Organization and the City shall be neither liable nor obligated to pay Greenway Trust or any of its employees, volunteers or contractors any sick leave, vacation pay, or any other benefit of employment nor to pay any social security or other tax which may arise as an incident of employment and Greenway Trust shall defend and indemnify the City from the same. The Greenway Trust shall pay all income and other taxes as due.

13. NON-APPLICATION OF FUNDS

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Volunteer Coordination Services or amounts after the end of the current fiscal periods, and this Agreement will terminate upon the completion of all remaining Volunteer Coordination Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

14. LEGAL RELATIONSHIP

14.1 It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one party or its contractors or subcontractors shall be deemed, or represent themselves to be, employees, agents, contractors or subcontractors of the other party.

14.2 The parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

14.3 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

14.4 Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

14.5 Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

14.6 This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either party.

15. ORDER OF PRECEDENCE

In the event of a conflict between the terms and condition of this Agreement and the terms and conditions of Exhibit "A", Scope of Volunteer Coordination Services, this Agreement shall control.

16. SEVERABILITY

Any provision of this Agreement which is declared invalid or illegal shall in no way effect or invalidate any other provision.

17. ENTIRE AGREEMENT

This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of the Agreement may be amended or modified except by written agreement signed by the Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 20____.

Mountains to Sound Greenway Trust

By: _____
Cynthia Welti, Executive Director

911 Western Avenue, Suite 203
Seattle, WA 98104

Staff Contact: Tor Bell
Staff Phone: 206-849-4331

Tax I.D. # 91-1531234

CITY OF NORTH BEND

By: _____
Kenneth G. Hearing, Mayor

Post Office Box 896
North Bend, WA 98045

Staff Contact: Jamie Burrell
Staff Phone: 425-888-7642

Approved as to Form:

By: _____
City Attorney

Exhibit A: Volunteer Coordination Services

Tollgate Farm E Bookend NW Parcel Weed Control Project, Phase 2

*A Cooperative Project between the City of North Bend
and the Mountains to Sound Greenway Trust*

Project Overview

Invasive English ivy, holly and other weeds are spreading throughout North Bend and the Upper Snoqualmie valley threatening critical fish and wildlife habitat. Over the last eight years, the Greenway Trust has worked with the City of North Bend to involve the community and facilitate young adult AmeriCorps Conservation Corps volunteer crews in the restoration of these natural lands. In 2013, the Greenway Trust will once again work with the City to coordinate volunteers and AmeriCorps crews in weed control at the east Tollgate Farm Bookend.

Project Goals

The project has three key goals, including:

Education and Outreach

This project provides the City of North Bend an opportunity to involve and educate the community on a range of important natural resource and land management issues and a chance for local residents to get their hands dirty working in their local park. The Greenway Trust will recruit and manage a minimum of 75 volunteers who are expected to contribute at least 450 hours of service removing invasive plants and planting native trees at the project site. At each volunteer event, Greenway Trust staff will educate volunteers on the impacts of weeds and the role land managers play in taking care of parks and natural resources. This project will also provide a training opportunity for young adults participating in a one-year AmeriCorps skill training program. Volunteers and AmeriCorps Conservation Corps crews will be trained on best management practices for controlling a variety of weeds specific to this area and will then participate in restoring the park.

Capacity Building

Like many smaller municipalities in King County, the City of North Bend has relatively limited staff resources and funding to complete projects of this nature. Partnering with the Greenway Trust allows the City to tap into the Greenway Trust's restoration expertise and provides a source of in-kind and financial match.

Natural Resource Enhancements

Restoration of the Tollgate area will greatly enhance the habitat values of this natural area. Invasive weeds, including ivy, knotweed, holly and others, typically provide very limited habitat value. These weeds generally blanket everything (forming monocultures) which reduces the natural diversity that was originally present. Expected long-term results of this project include: a recovered and enhanced forested canopy and improved wildlife habitat.

The City is partnering with the Greenway Trust to accomplish the above goals.

In consideration of the above, the parties hereto agree to provide the following services:

The Greenway Trust Shall Provide The Following Services:

- A minimum of \$16,300 in cash and in-kind match to increase the effectiveness of public involvement and restoration efforts.
- Recruit and track at least 75 volunteers who shall contribute a minimum of 450 hours of volunteer service (valued at the state rate of \$14/hr).
- Develop a project schedule and obtain approval by the City Project Manager.
- Develop a site maintenance and monitoring plan to ensure control of invasive species.

- Train and educate all AmeriCorps Conservation Corps volunteer members on safety issues, goals of the project and the importance of this restoration work in the context of the health of the entire basin.
- Coordinate approximately 26 days of training (1 day equals 50 hours of training) for AmeriCorps Conservation Corps volunteer members. At this training the Greenway Trust will educate AmeriCorps volunteers on how to remove invasive species, and how to chemically treat holly, laurel, knotweed and other weeds as necessary.
- Coordinate all volunteers on-site.
- Coordinate tools, materials and safety equipment for all restoration events.
- Coordinate all project material acquisition and delivery.
- Recognize the City's commitment and involvement in these activities in all related materials.

The City of North Bend Shall:

- Identify one Project Manager who will be the main contact for this agreement.
- Obtain necessary permits and assist the Greenway Trust in obtaining required access to the site, keys and other items necessary for the successful completion of this project.
- Reimburse the Greenway Trust for expenses detailed in Exhibit B, not to exceed \$31,990.00.

Exhibit B: Budget

Tollgate Farm E Bookend NW Parcel Weed Control Project, Phase 2

*A Cooperative Project between the City of North Bend
and the Mountains to Sound Greenway Trust*

The Greenway Trust shall invoice the City for the following services at listed rates. Quantities may vary but total to be invoiced shall not exceed \$31,990.00.

Program Development, Volunteer Recruitment, Coordination of Invasive Plant Removal, Coordination of Fall Planting

Stewardship Director	5 hours	\$73.50/hour	\$367.50
Restoration Project Coordinator	85 hours	\$46.75/hour	\$3,973.75
Senior Program Associate	6 hours	\$42.00/hour	\$252.00
Volunteer Program Coordinator	50 hours	\$46.75/hour	\$2,337.50
Conservation Corps IPs	90 hours	\$21.00/hour	\$1,890.00
Conservation Corps Crew	26 days	\$1,125.00/day	\$29,250.00

Restoration Materials

Plant Material and Caging			\$3,750.00
Misc. Supplies			\$169.25

Volunteer Contribution

Volunteers	450 hours	\$14.00/hour	\$6,300.00
------------	-----------	--------------	------------

TOTAL PROJECT VALUE **\$48,290.00**

PARTNER CONTRIBUTIONS

City Payment to the Greenway Trust: **\$31,990.00**

The Greenway Trust shall bill the City for services at the rates listed above. Quantities may vary, but the total billed will not exceed \$31,990.00.

Greenway Trust Contribution: **\$16,300.00**

The Greenway Trust will provide a minimum of \$16,300.00 in in-kind and/or cash match. Matching amounts will be documented on all billings submitted to the City at the rates above or at current market value for materials such as plants.